YONG ING KAI & ANOR v. SUPERINTENDENT OF LANDS AND SURVEYS, KUCHING DIVISION

FEDERAL COURT, PUTRAJAYA
ABDUL RAHMAN SEBLI CJ (SABAH & SARAWAK)
ZABARIAH YUSOF FCJ
MARY LIM FCJ
[CIVIL APPEAL NO: 01(f)-1-01-2022(Q)]
9 OCTOBER 2023

Abstract – *The court, in response to a call for modification of s. 60 of the Sarawak Land Code (Cap 81) ('Land Code') to bring it into accord with art. 13(2) of the Federal Constitution ('FC'), has considered case laws together with the provisions of the Land Code and the FC. The question was whether the modification of the Land Code is permissible under art. 162(6) of the FC. The court's power of modification under art. 162(6) of the FC is only exercisable in respect of laws that were in operation in the Federation or any part thereof immediately before 31 August 1957 and not after. Section 60(1)(a) of the Land Code came into operation on 1 January 1958, that is, after Merdeka Day and when Sarawak was not even part of the Federation. It is therefore not an 'existing law' within the meaning of art. 162(6) of the FC and hence, not subject to modification.*

LAND LAW: *Acquisition of land – Compulsory acquisition – Compensation – Date of valuation – Pre-acquisition notification under s. 47 of Sarawak Land Code (Cap 81) ('Land Code') followed by s. 48 declaration 12 years later – Whether compensation to be calculated based on market value as at s. 48 declaration or s. 47 notification – Whether assessment of compensation based on s. 47 notification correct in law – Whether s. 47 inconsistent with art. 13(2) of Federal Constitution to be declared void – Whether delay in making award could be equated with unconstitutionality – Whether compensation adequate*

CONSTITUTIONAL LAW: *Legislation – Constitutionality – Compulsory acquisition of land by State Government of Sarawak – Pre-acquisition notification under s. 47 of Sarawak Land Code (Cap 81) ('Land Code') followed by s. 48 declaration 12 years later – Whether compensation to be calculated based on market value as at s. 48 declaration or s. 47 notification – Call for modification of s. 60 of Land Code to be read in accord with art. 13 of Federal Constitution ('FC') – Whether s. 60 subject to modification under art. 162(6) of FC – Whether court's power of modification under art. 162(6) only exercisable in respect of laws in operation immediately before 31 August 1957 and not after – Whether s. 60(1)(a) 'existing law' within meaning of art. 162(6) of FC*

WORDS & PHRASES: *'existing law' – Federal Constitution, art. 162(6) – Definition of – 'any law in operation in the Federation or any part thereof immediately before Merdeka Day' – Meaning under art. 44 of Constitution of the State of Sarawak – Whether any law having effect as part of law of Colony of Sarawak or any part thereof immediately before commencement of State Constitution – Effect of*

The appellants were formerly the registered proprietors of two parcels of land, Lot 4000 and part of Lot 4004 ('subject lands'). By a pre-acquisition notification under s. 47 of the Sarawak Land Code (Cap 81) ('Land Code') dated 16 July 1997, the appellants were put to notice that the subject lands were being considered for compulsory acquisition under s. 46 of the Land Code 'for the purpose of Sungai Sarawak Flood Mitigation Channel.' On 2 July 2009, a declaration under s. 48 was gazetted. An inquiry under s. 51 of the Land Code was held pursuant to which an award was made on 21 November 2011. There was therefore a delay of 12 years from the date of the s. 47 notice to the date of the s. 48 declaration and 14 years to the date of the award. Compensation in the sum of RM180,795.38 was paid for Lot 4000 and a sum of RM74,256.59 was paid for part of Lot 4004. The appellants accepted the compensation sums under protest and referred the matter to the High Court for determination under s. 56 of the Land Code. The appellants succeeded in the High Court. The High Court Judge ('HCJ') acceded to their argument that compensation ought to be calculated based on the market value of the subject lands at the date of the s. 48 declaration and not at the date of the s. 47 notification, relying on the Court of Appeal decision in *Jais Chee & Ors v. Superintendent of Lands & Surveys Kuching Division* ('*Jais Chee*'). The HCJ read s. 60 of the Land Code in modification with art. 13 of the Federal Constitution ('FC') and applied *Jais Chee*. Accordingly, the award was increased from RM180,795.38 to RM234,848 for Lot 4000 and from RM74,256.59 to RM98,664.30 for Lot 4004. Aggrieved, the respondent appealed to the Court of Appeal and succeeded. The decision of the High Court was reversed and the sum awarded pursuant to the s. 51 inquiry was restored. In so deciding, the Court of Appeal refused to follow *Jais Chee* and instead followed the later decision of the same court in *Superintendent of Lands and Surveys Samarahan Division v. Surianto Abdul Hamid & Anor* ('*Surianto*') where it was held, *inter alia*, that the date for valuation is the date of the s. 47 notification and not the date of the s. 48 declaration. In this appeal, the appellants were calling for a modification of s. 60 of the Land Code to bring it into accord with art. 13(2) of the FC in order that assessment of compensation could be based on the market value of the subject lands at the date of the declaration under s. 48 of the Land Code and not at the date of the s. 47 notification. The main thrust of the appellants' argument was that, not only were they deprived of the subject lands due to the acquisition by the State, but inadequate compensation was awarded as a result of, 'the draconian effect of the pre-Malaysia Day law' which the Court of Appeal did not interpret in conformity with art. 13(2) of the FC.

Held (dismissing appeal)
Per Abdul Rahman Sebli FCJ delivering the judgment of the court:

(1) Section 60(1)(a) of the Land Code is clear and unambiguous, that compensation is to be assessed by considering the market value at the date of the notification under s. 47 of the Land Code or, if there is no such notification, the market value at the date of the declaration under s. 48. In the present case, there was a notification issued under s. 47 of the Land Code. The provision is not inconsistent with art. 13(2) of the FC for it to be declared void under art. 4(1) as it is not a law that provides for compulsory acquisition without adequate compensation. Delay in making an award cannot be equated with unconstitutionality. (paras 26 & 31)

(2) *Superintendent Of Lands & Surveys Fifth Division, Limbang v. Lim Teck Hoo & Anor* ('*Lim Teck Hoo*'), a decision of the apex court on s. 60(1)(a) of the Land Code, is the authority to resolve the conflict between *Jais Chee* and *Surianto*. There was no reason for this court to depart from *Lim Teck Hoo* as it was directly on point as it dealt with the same provision of law dealt in the present appeal, *ie*, s. 60(1)(a) of the Land Code. It was unnecessary to go so far as to invoke art. 13(2) of the FC to determine adequacy of compensation in a land reference. One way of preventing long delay would be to fix a timeline whereby notifications under s. 47 of the Land Code would automatically lapse. Thus, while the HCJ was at liberty to follow either *Jais Chee* or *Surianto*, His Lordship was bound by the doctrine of *stare decisis* to abide by *Lim Teck Hoo*, and so was the Court of Appeal in *Jais Chee*. *Jais Chee* was decided on the footing that s. 60(1)(a) of the Land Code could be modified under art. 162(6) of the Federal Constitution. However, the question was whether modification of the Land Code under the article is at all permissible. (paras 40 & 45-48)

(3) Section 60(1)(a) of the Land Code is not a law that is subject to modification under art. 162(6) of the FC. The operative words in art. 162(6) are 'existing law', which art. 160 defines as 'any law in operation in the Federation or any part thereof immediately before Merdeka Day'. The words 'Merdeka Day' is defined by the same article as 'the thirty-first day of August, nineteen hundred and fifty-seven' (31 August 1957). The word 'Federation', on the other hand, means the Federation established in accordance with the Federation of Malaya Agreement 1957. This means that the court's power of modification under art. 162(6) of the FC is only exercisable in respect of laws that were in operation in the Federation or any part thereof immediately before 31 August 1957 and not after. Section 60(1)(a) of the Land Code came into operation on 1 January 1958 (after Merdeka Day) and when Sarawak was not even part of the Federation. It is therefore not an 'existing law' within the meaning of art. 162(6) of the FC. (paras 31, 51 & 52)

(4) As for the meaning of 'existing law', art. 44 of the State Constitution defines it to mean any law having effect as part of the law of the Colony of Sarawak or any part thereof immediately before the commencement of the State Constitution. The State Constitution which is Annexure C to the Malaysia Agreement came into force on Malaysia Day, 16 September 1963. From a plain reading of art. 46(3)(a) of the State Constitution, a modification order under the article could only have been made by the Governor before Malaysia Day and, likewise, a modification order under art. 46(4)(a) could only have been made by him within two years after the commencement of the State Constitution. Both periods have long gone by. (paras 55 & 56)

(5) Further, the clear language of s. 74(4) of Malaysia Act 1963 provides that the modifications of 'present law' can only be made by the Yang di-Pertuan Agong at the request of the Yang di-Pertua Negeri of Sarawak or the Yang di-Pertua Negeri of Sabah, as the case may be. Such power of modification of State laws like the Land Code is not conferred on the courts as it is not a law that comes within the purview of art. 162(6) of the FC. Hence, for these reasons, the answer to the leave question was in the negative as s. 60(1)(a) of the Land Code was not a pre-Merdeka law and therefore not an 'existing law' that may be modified under art. 162(6) of the FC. (paras 59 & 61)

Per Mary Lim FCJ (supporting judgment):

(1) It was not open to the High Court to take the course of reasoning that 'even with any upward adjustment, the amount of compensation would still be far less than the value of the land as at s. 48 notice' in view of the terms of s. 60 of the Land Code. Legislation is seen as enacted in clear terms conveying its intent and thus, in interpreting or construing their meaning, it should no longer be the three-step formula. In the context of ss. 47 and 48 read together with s. 60(1)(a) of the Land Code, it is evident that these provisions are enacted to provide for adequate compensation of any land resumed by the State Government. Any delay in carrying out any exercise of determination of the adequacy of compensation does not alter that intent. (paras 86 & 89)

(2) Although the Court of Appeal had allowed the appeal of the respondent and ordered compensation to be paid by reference to the date of the s. 47 notice and supposedly restoring the award of the Superintendent, in actuality, it was not. The Superintendent awarded compensation at the rate of RM32 psm, a value under s. 48 and not under s. 47. The market values of the subject lands were effectively similar, whether under the s. 47 or s. 48 notice. The appellants who had purchased the subject lands the year before the resumption notice under s. 47 at the price of RM10.30 psm was ultimately paid RM32 psm for the

resumption. Such compensation could not be said to be inadequate by the terms of art. 13 of the FC; even if the modification exercise could be undertaken in law. (paras 91 & 92)

(3) All objections should be promptly referred to the High Court for determination. The appellants had filed their objections in 2011 but the reference was only filed seven years later, in 2018, and duly disposed of by the High Court in the same year. (para 93)

Bahasa Melayu *Headnotes*

Perayu-perayu adalah bekas pemilik dua bidang tanah, Lot 4000 dan sebahagian Lot 4004 ('tanah-tanah'). Melalui satu pemberitahuan pra-pengambilan bawah s. 47 Kanun Tanah Sarawak (Bab 81) ('Kanun Tanah') bertarikh 16 Julai 1997, perayu-perayu dimaklumkan bahawa tanah-tanah itu sedang dipertimbangkan untuk pengambilan wajib bawah s. 46 Kanun Tanah 'untuk tujuan saluran mitigasi banjir Sungai Sarawak'. Pada 2 Julai 2009, satu deklarasi bawah s. 48 diwartakan. Satu siasatan bawah s. 51 Kanun Tanah diadakan yang berikutannya satu award diberikan pada 21 November 2011. Oleh itu, terdapat kelewatan 12 tahun dari tarikh pemberitahuan bawah s. 47 hingga tarikh deklarasi s. 48 dan 14 tahun ke tarikh award tersebut. Pampasan berjumlah RM180,795.38 dibayar untuk Lot 4000 dan sejumlah RM74,256.59 dibayar untuk sebahagian Lot 4004. Perayu-perayu menerima jumlah pampasan bawah protes dan merujuk perkara tersebut ke Mahkamah Tinggi untuk pertimbangan bawah s. 56 Kanun Tanah. Perayu-perayu berjaya di Mahkamah Tinggi. Hakim Mahkamah Tinggi ('HMT') menerima hujahan mereka bahawa pampasan wajar dikira berdasarkan nilai pasaran tanah-tanah itu pada tarikh deklarasi bawah s. 48 dan bukan pada tarikh pemberitahuan s. 47, bersandarkan pada keputusan Mahkamah Rayuan dalam kes *Jais Chee & Ors v. Superintendent of Lands & Surveys Kuching Division* ('*Jais Chee*'). Hakim Mahkamah Tinggi membaca s. 60 Kanun Tanah dalam pengubahsuaian dengan per. 13 Perlembagaan Persekutuan ('PP') dan mengguna pakai *Jais Chee*. Berikutan itu, award dinaikkan daripada RM180,795.38 ke RM234,848 untuk Lot 4000 dan dari RM74,256.59 ke RM98,664.30 untuk Lot 4004. Terkilan, responden merayu ke Mahkamah Rayuan dan berjaya. Keputusan Mahkamah Tinggi diakas dan jumlah yang diawardkan menurut siasatan bawah s. 51 dikembalikan. Apabila memutuskan sedemikian, Mahkamah Rayuan menolak untuk mengikut keputusan *Jais Chee* dan sebaliknya mengikuti keputusan terkemudian mahkamah sama dalam kes *Superintendent of Lands and Surveys Samarahan Division v. Surianto Abdul Hamid & Anor* ('*Surianto*') yang memutuskan, antara lain, tarikh penilaian adalah tarikh pemberitahuan bawah s. 47 dan bukan tarikh deklarasi bawah s. 48. Dalam rayuan ini, perayu-perayu memohon untuk pengubahsuaian s. 60 Kanun Tanah untuk menjadikannya selari dengan per. 13 PP agar penilaian pampasan boleh dibuat berdasarkan nilai pasaran tanah-tanah pada tarikh deklarasi bawah s. 48 Kanun Tanah dan bukan pada tarikh pemberitahuan

A s. 47. Teras utama hujahan perayu-perayu adalah, bukan sahaja mereka dinafikan tanah-tanah tersebut akibat pengambilan oleh Negeri, tetapi pampasan tidak setimpal diberikan akibat 'kesan drakonian undang-undang pra-Merdeka' yang tidak ditafsir oleh Mahkamah Rayuan selaras dengan per. 13(2) PP.

B **Diputuskan (menolak rayuan)**

Oleh Abdul Rahmah Sebli HMP menyampaikan penghakiman mahkamah:

(1) Seksyen 60(1)(a) Kanun Tanah jelas, bahawa pampasan akan dinilai dengan mempertimbangkan nilai pasaran pada tarikh pemberitahuan bawah s. 47 Kanun Tanah dan, jika tiada pemberitahuan sedemikian, nilai pasaran pada tarikh deklarasi bawah s. 48. Dalam kes ini, pemberitahuan telah dikeluarkan bawah s. 47 Kanun Tanah. Peruntukan tersebut bukan tidak konsisten dengan per. 13(2) PP untuk diisytiharkan batal bawah per. 4(1) kerana itu bukan undang-undang yang memperuntukkan pengambilan wajib tanpa pampasan setimpal. Kelewatan memberi award tidak boleh disamakan dengan tidak berperlembagaan.

(2) *Superintendent Of Lands & Surveys Fifth Division, Limbang v. Lim Teck Hoo & Anor* ('*Lim Teck Hoo*'), satu keputusan mahkamah tertinggi berkaitan s. 60(1)(a) Kanun Tanah adalah autoriti untuk menyelesaikan konflik antara *Jais Chee* dan *Surianto*. Tiada sebab untuk mahkamah ini menyimpang daripada keputusan *Lim Teck Hoo* kerana kes itu berkait tepat kerana kes itu melibatkan peruntukan undang-undang yang sama dengan rayuan ini, iaitu, s. 60(1)(a) Kanun Tanah. Tiada keperluan untuk membangkitkan per. 13(2) PP untuk menentukan kecukupan pampasan dalam rujukan tanah. Satu cara mengelak kelewatan panjang adalah dengan menetapkan tempoh masa iaitu, pemberitahuan bawah s. 47 Kanun Tanah akan tamat secara automatik. Oleh itu, walaupun HMT bebas mengikuti sama ada *Jais Chee* atau *Surianto*, beliau terikat dengan doktrin *stare decisis* untuk mengikuti *Lim Teck Hoo* dan Mahkamah Rayuan dalam kes *Jais Chee*. *Jais Chee* diputuskan atas dasar bahawa s. 60(1)(a) Kanun Tanah boleh diubahsuai bawah per. 162(6) PP. Walau bagaimanapun, soalan sama ada pengubahsuaian Kanun Tanah bawah perkara tersebut dibenarkan sama sekali.

(3) Seksyen 60(1)(a) Kanun Tanah bukan undang-undang yang tertakluk pada pengubahsuaian bawah per. 162(6) PP. Perkataan-perkataan tepat dalam per. 162(6) adalah 'undang-undang yang sedia ada', yang ditakrif bawah per. 160 sebagai 'mana-mana undang-undang yang berkuat kuasa dalam Persekutuan atau mana-mana bahagiannya sebaik sebelum Hari Merdeka. Perkataan-perkataan 'Hari Merdeka' didefinisi oleh perkara yang sama sebagai 'tiga puluh satu hari bulan Ogos, tahun seribu sembilan ratus lima puluh tujuh' (31 Ogos 1957). Sebaliknya, perkataan

'Persekutuan' bermaksud Persekutuan yang dibentuk menurut Perjanjian Persekutuan Malaya 1957. Ini bermaksud kuasa mahkamah untuk mengubahsuai per. 162(6) PP hanya boleh dilaksanakan berkaitan dengan undang-undang yang berkuat kuasa dalam Persekutuan atau sebahagiannya, sebaik sebelum 31 Ogos 1957 dan bukan sebelum itu. Seksyen 60(1)(a) Kanun Tanah mula berkuat kuasa pada 1 Januari 1958 (selepas Hari Merdeka) dan apabila Sarawak bukan pun sebahagian Persekutuan. Oleh itu, ini bukan 'undang-undang yang sedia ada' dalam maksud per. 162(6) PP.

(4) Berkaitan maksud 'undang-undang yang sedia ada', per. 44 Perlembagaan Negeri mendefinisikannya agar bermaksud mana-mana undang-undang yang mempunyai kesan sebagai sebahagian undang-undang Koloni Sarawak atau mana-mana bahagian daripadanya sejurus sebelum kuat kuasa Perlembagaan Negeri. Perlembagaan Negeri yang adalah Lampiran C pada Perjanjian Malaysia mula berkuat kuasa pada Hari Malaysia, 16 September 1963. Daripada bacaan biasa per. 46(3)(a) Perlembagaan Negeri, satu perintah pengubahsuaian bawah perkara tersebut hanya boleh dibuat oleh Ketua Menteri sebelum Hari Merdeka dan perintah pengubahsuaian bawah per. 46(4)(a) hanya boleh dibuat olehnya dalam tempoh dua tahun selepas penguatkuasaan Perlembagaan Negeri. Kedua-dua tempoh telah lama berlalu.

(5) Selanjutnya, bahasa jelas s. 74(4) Akta Malaysia 1963 memperuntukkan bahawa pengubahsuaian 'undang-undang semasa' hanya boleh dibuat oleh Yang di-Pertuan Agong atas permintaan Yang di-Pertua Negeri Sarawak atau Yang di-Pertua Negeri Sabah, yang mana terpakai. Kuasa pengubahsuaian undang-undang Negeri seperti Kanun Tanah tidak diberi pada mahkamah kerana itu bukan undang-undang yang terangkum dalam ruang lingkup per. 162(6) PP. Oleh itu, atas alasan-alasan ini, jawapan untuk soalan-soalan kebenaran adalah dalam negatif kerana s. 60(1)(a) Kanun Tanah bukan undang-undang pra-Merdeka dan oleh itu bukan 'undang-undang yang sedia ada' yang boleh diubahsuai bawah per. 162(6) PP.

Oleh Mary Lim HMP (menyokong):

(1) Tidak terbuka untuk Mahkamah Tinggi memberi alasan bahawa 'dengan apa-apa pelarasan menaik sekalipun, jumlah pampasan akan masih jauh kurang daripada nilai tanah setakat notis s. 48' berdasarkan terma-terma s. 60 Kanun Tanah. Perundangan digubal dalam terma yang jelas menyampaikan niatnya dan oleh itu, apabila mentafsir maksudnya, formula tiga langkah tidak lagi boleh digunakan. Dalam konteks ss. 47 dan 48 dibaca bersama-sama dengan s. 60(1)(a) Kanun Tanah, jelas bahawa peruntukan-peruntukan tersebut digubal untuk memperuntukkan pampasan secukupnya untuk mana-mana tanah yang diambil Kerajaan Negeri. Apa-apa kelewatan dalam melaksanakan penentuan kesetimpalan pampasan tidak mengubah niat tersebut.

(2) Walaupun Mahkamah Rayuan telah membenarkan rayuan responden dan memerintahkan pampasan dibayar dengan rujukan pada tarikh pemberitahuan s. 47 dan dikatakan mengembalikan award Superintenden, hakikatnya, ini tidak berlaku. Superintenden mengawardkan pampasan pada kadar RM32smp, nilai bawah s. 48 dan bukan bawah s. 47. Nilai pasaran tanah-tanah tersebut jelas serupa, sama ada bawah notis s. 47 atau s. 48. Perayu-perayu yang telah membeli tanah-tanah tersebut pada tahun sebelum pemberitahuan pengambilan bawah s. 47 pada harga RM10.30smp akhirnya dibayar RM32smp untuk pengambilan tersebut. Pampasan sedemikian tidak boleh dikatakan tidak mencukupi menurut terma-terma per. 13 PP; walaupun pelaksanaan pengubahsuaian boleh dibuat di sisi undang-undang.

(3) Kesemua bantahan perlu dirujuk segera untuk pertimbangan Mahkamah Tinggi. Perayu-perayu telah memfailkan bantahan-bantahan pada 2011 tetapi rujukan hanya difailkan tujuh tahun kemudian, pada 2018, dan diputuskan Mahkamah Tinggi dalam tahun yang sama.

Case(s) referred to:

Ann Joo Steel Bhd v. Pengarah Tanah Dan Galian Negeri Pulau Pinang & Anor And Another Appeal [2019] 9 CLJ 153 FC ***(refd)***

AJS v. JMH & Another Appeal [2022] 1 CLJ 331 ***(refd)***

Buan Joong Sdn Bhd v. Superintendent Of Lands & Surveys (Kuching Division) [2005] 2 CLJ 910 CA ***(refd)***

Bursa Malaysia Securities Bhd v. Mohd Afrizan Husain [2022] 4 CLJ 657 FC ***(refd)***

Datuk Bandar Kuala Lumpur v. Perbadanan Pengurusan Trellises & Ors And Other Appeals [2023] 5 CLJ 167 FC ***(refd)***

Jais Chee & Ors v. Superintendent Of Lands & Surveys Kuching Division [2014] 3 CLJ 467 CA ***(refd)***

Kerajaan Negeri Selangor & Ors v. Sagong Tasi & Ors [2005] 4 CLJ 169 CA ***(dist)***

Mohd Noor Othman & Ors v. Hj Mohd Ismail Hj Ibrahim & Ors & Another Case [1988] 2 CLJ 597; [1988] 1 CLJ (Rep) 224 SC ***(refd)***

Ngu Toh Tung & Ors v. Superintendent Of Lands & Surveys, Kuching Division, Kuching & Anor [2006] 1 CLJ 30 CA ***(refd)***

Pemungut Hasil Tanah Daerah Barat Daya, Penang v. Kam Gin Paik & Ors [1986] 1 CLJ 283; [1986] CLJ (Rep) 33 PC ***(refd)***

Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee [1983] 1 LNS 14 FC ***(dist)***

Pemungut Hasil Tanah, Kuantan v. Oriental Rubber & Palmoil Sdn Bhd [1985] 1 LNS 127 FC ***(refd)***

Re Datuk James Wong Kim Min; Minister Of Home Affairs Malaysia & Ors v. Datuk James Wong Kim Min [1976] 1 LNS 129 FC ***(refd)***

Superintendent Of Lands And Surveys, Kuching Division v. Robert Lee Chang Hock [2016] 1 LNS 1130 CA ***(refd)***

Superintendent Of Lands & Surveys Fifth Division, Limbang v. Lim Teck Hoo & Anor [1979] 1 LNS 103 FC ***(foll)***

Superintendent Of Lands & Surveys Samarahan Division v. Surianto Abdul Hamid & Anor [2016] 3 CLJ 591 CA ***(refd)***

Superintendent Of Land And Survey Department Kuching Divisional Office & Anor v. Ratnawati Hasbi Mohamad Suleiman [2020] 2 CLJ 425 FC ***(dist)***
Tan Kah Fatt & Anor v. Tan Ying [2023] 2 CLJ 169 FC ***(refd)***
Tan Kheng Pang v. Superintendent Of Lands & Surveys (Land Reference No: 15-3-2007-III) (Unreported) ***(refd)***

Legislation referred to:
Aborigines Peoples Act 1954, s. 12
Federal Constitution, arts. 4(1), 13(2), 162(6)
Land Acquisition Act 1960, ss. 8(4)
Land Code (Sarawak) (Cap 81), ss. 46, 47, 48(2), 49, 51, 52, 53, 54, 56, 57, 60(1)(a), 71(2)
Interpretation Acts 1948 and 1967, ss. 17A, 66
Malaysia Act 1963, s. 74(4)

For the appellant - Arthur Lee Cheng Chuan & Sylvester Lai Tze Yang; M/s Arthur Lee, Lin & Co
For the respondent - JC Fong, Ronald Felix Hardin, Beatrice Minda Anak Winston Bale; Jabatan Peguam Besar Negeri Sarawak

[Editor's note: For the Court of Appeal judgment, please see Superintendent Of Lands And Surveys Kuching Division v. Yong Ing Kai & Anor [2022] 1 CLJ 218 (affirmed).]

Reported by S Barathi

JUDGMENT

Abdul Rahman Sebli CJ (Sabah & Sarawak):

[1] This case is on the adequacy of compensation arising from compulsory land acquisition by the Government of Sarawak through the respondent. The High Court had allowed the appellants' claim and adjusted the compensation sum upwards but dismissed their claim for damages. However, the Court of Appeal reversed the decision and set aside the adjusted compensation sum and restored the sum awarded by the respondent, hence the present appeal before us.

[2] The salient facts are as follows. The appellants were formerly the registered proprietors of two parcels of land described as Lot 4000 Block 17 Salak Land District ("Lot 4000") and Lot 5052 Block 17 Salak Land District being part of Lot 4004 Block 17 Salak Land District ("Lot 4004") (collectively "the subject lands").

[3] By a pre-acquisition notification under s. 47 of the Sarawak Land Code (Cap. 81) ("the Land Code") dated 16 July 1997, the appellants were put to notice that the subject lands were being considered for compulsory acquisition under s. 46 of the Land Code "for the purpose of Sungai Sarawak Flood Mitigation Channel."

[4] On 2 July 2009, a declaration under s. 48 was gazetted. By virtue of s. 48(2) of the Land Code, the declaration is "conclusive evidence" that the subject lands were needed for the purpose specified therein. By this declaration, the whole of Lot 4000 (0.5728 hectare) and part of Lot 4004 (0.2349.15 hectare out of a total of 0.5676 hectare) were acquired by the State Government.

[5] An inquiry under s. 51 of the Land Code was held pursuant to which an award was made on 21 November 2011. There was therefore a delay of 12 years from the date of the s. 47 notice to the date of the s. 48 declaration and 14 years to the date of the award. Compensation in the sum of RM180,795.38 was paid for Lot 4000 and a sum of RM74,256.59 for part of Lot 4004. The appellants accepted the compensation sums under protest and referred the matter to the High Court for determination under s. 56 of the Land Code.

[6] The appellants succeeded in the High Court. The learned judge acceded to their argument that compensation ought to be calculated based on the market value of the subject lands at the date of the s. 48 declaration (2 July 2009) and not at the date of the s. 47 notification (16 July 1997), relying on the Court of Appeal decision in *Jais Chee & Ors v. Superintendent of Lands & Surveys Kuching Division* [2014] 3 CLJ 467 ("*Jais Chee*").

[7] It was held by the learned judge that in cases of inordinate and unexplained delay, it is appropriate to determine compensation based on the value of a more recent sale of an adjacent land as it reflects a realistic and fair market value. I reproduce below the relevant paragraphs of the High Court judgment on this particular issue:

> [7] It must be noted that there had been an inordinate unexplained delay of about 14 years from the date of the section 47 notice (or 2 years from the date of the Section 48 notice) to the date of the inquiry under section 51. This explain why in both valuation report prepared by the objector's valuer (OW2) and the respondent's valuer (RW1), the market value of the subject lands as at date of the section 47 notice and the date of section 48 notice were mentioned.
>
> …
>
> [13] I am aware of another Court of Appeal decision in *Surianto Abdul Hamid v. Superintendent of Lands and Surveys Samarahan Division* [2014] 1 LNS 1219, where a different panel of the court decided not to follow Jais bin Chee, and, despite the delay in holding the section 51 inquiry, the valuation of the subject land as at s. 47 notice was used in determining the fair amount of compensation with an upward adjustment to cater for the time factor.
>
> [14] Both valuer for the objector and the respondent had provided data on the comparable sale of land around the section 48 notice and those sales were transacted at a higher price than the comparable sales at the

> section 47 notice. In my opinion, even with the necessary upward adjustment on the value of the subject land as at the section 47 notice, the amount of compensation to be awarded would still be far less than the value of the land as at section 48 notice. With the evidence of such sale before the court, it would be unfair to the objector if the court were to ignore those evidence and made the award base on value of the land as at s.47 notice.
>
> [15] In the present case, there is no explanation as to why it took that long for the respondent to hold such inquiry. Hence, I am of the opinion that such delay is unreasonable. In the digital and IT era there should be no excuse for the delay in holding the enquiry as it would deprived (*sic*) the objectors from utilising the Compensation money at the earliest possible time. In the circumstances, I am of the opinion that, for the purpose of determining the fair amount of compensation, the value of the said land as at the date of section 48 notice should be used.

[8] What the learned judge did was to read s. 60 of the Land Code in modification with art. 13 of the Federal Constitution and applied *Jais Chee*. Accordingly, the award was increased by the learned judge to RM234,848 (from RM180,795.38) for Lot 4000 and to RM98,664.30 (from RM74,256.59) for Lot 4004 making a grand total of RM333,512.30. The respondent was ordered to pay the difference between this sum and the sum already paid pursuant to the s. 51 inquiry.

[9] Aggrieved by the decision, the respondent appealed to the Court of Appeal and succeeded. The decision of the High Court was reversed and the sum awarded pursuant to the s. 51 inquiry was restored. In so deciding, the Court of Appeal refused to follow *Jais Chee* and instead followed the later decision of the same court in *Superintendent Of Lands & Surveys Samarahan Division v. Surianto Abdul Hamid & Anor* [2016] 3 CLJ 591 ("*Surianto*") where it was held *inter alia* that the date for valuation is the date of the s. 47 notification and not the date of the s. 48 declaration.

[10] The Court of Appeal also agreed with *Surianto* that in addressing the issue of adequacy of compensation due to inordinate and unexplained delay, an upward adjustment must be made to the compensation sum based on the factual matrix of each case. It noted that in the present case, the respondent had done so by making an upward adjustment to the compensation sum when making the award. After going through the reports of the valuers, the Court of Appeal concluded at para. [42] of the judgment:

> [42] Therefore, we are of the considered opinion that the Respondents have been adequately or reasonably compensated by having annual increase of 4% to the market value of the said Lands from 1997 to 2012. We find that the final rate of RM31.50 per sq m is a fair and reasonable compensation for the said Lands.

[11] The appellants did not dispute the respondent witness's (RW1) consideration of time factor adjustment fixed at 4% per annum during the trial. RW1 had acknowledged and addressed the time factor by providing a compounded adjustment rate at 4% per annum for 15 years, that is from the s. 47 notice date of 16 July 1997 to the resumption date of 9 January 2012.

[12] Therefore, the market value of the subject lands would have an appreciation of 4% per annum, which means the appellants had been adequately, fairly and reasonably compensated by having an annual increase of 4% to the market value of the subject lands from July 1997 up to the date of resumption in January 2012. This, according to the respondent, would be fair and equitable and would ensure that the appellants were paid a fair and reasonable compensation for their lands. I agree that this approach had ensured compliance with s. 60(1)(a) read with art. 13 of the Federal Constitution.

[13] It is worth noting that the High Court had disagreed with the assessors' opinion in making an upward adjustment of the compensation sum but the Court of Appeal's award is supported by the opinion of the two assessors. It is therefore incorrect for learned counsel for the appellants to say that the Court of Appeal did not take into account the inordinate and unexplained delay in determining the compensation sum.

[14] Leave to appeal against the decision of the Court of Appeal was obtained by the appellants to raise the following questions of law (reproduced verbatim below) for this court's determination:

> 1. Unlike Section 8 of the Land Acquisition Act 1960 (Act 486) (which does not (*sic*) applicable to Sarawak) which ensured the adequate compensation is not only paid, but be paid in speedily manner to the Objectors. In the absence of such express provision in pre-merdeka law, Sarawak Land Code, whether Section 60 of the Sarawak Land Code (Cap. 81) should be read in modification to be in line with Article 13 of the Federal Constitution, in cases of inordinate and unexplained delay of the State in conducting enquiry pursuant to Section 51 of the Sarawak Land Code, after evaluating the evidence in totality.
>
> 1.1 If the answer to question (1) is affirmative, whether the decision of the Court of Appeal which failed to carry out such evaluation should be set aside, and the appeal be re-heard by the Court of Appeal or be taken up by way of an appeal to the Federal Court?
>
> 1.2 If the answer to question (1) is negative, whether the decision of the Court of Appeal in reversing the finding of fact (quantum of compensation) without evaluating the Court of Appeal or be taken up by way of an appeal to the Federal Court.

[15] In essence, the appellants are calling for a modification of s. 60 of the Land Code to bring it into accord with art. 13(2) of the Federal Constitution in order that assessment of compensation could be based on the market value of the subject lands at the date of the declaration under s. 48 of the Land Code and not at the date of the s. 47 notification.

[16] With due respect, the questions could have been better worded. Leave questions should be drafted with precision and with exactitude so as to enable the court to identify what exactly are the issues of law that the aggrieved party wishes the court to determine. The present appeal should be to resolve the conflict between the decisions of the Court of Appeal in *Jais Chee* and *Surianto* but the manner in which the leave questions are framed blurs the line between issues of fact and issues of law. Leave questions should be pure unadulterated questions of law.

[17] What is clear however, is that the whole complaint is over the inordinate and unexplained delay by the respondent in holding an inquiry under s. 51 of the Land Code after issuing the notice of acquisition under s. 47 and after making the declaratory order under s. 48. The memorandum of appeal (reproduced verbatim below) provides a clearer picture:

> 1. The learned Court of Appeal Judges have erred in law and in facts in deciding that the date for determination of the market value of the Appellants' land ("the subject land") which were acquired statutorily by the Sarawak Government for public purposes, is the date of the Section 47 Notice to determine the compensation to be paid for the subject land, and not the date of the Section 48 Declaration, despite the Court of Appeal have taken cognizance of the undisputed finding of fact that there was a grave unexplained inordinate delay of fourteen (14) years in making the award for compensation by the Respondent, which in breach of the fundamental right which enshrined under Article 13 of the Federal Constitution.
>
> 2. The learned Court of Appeal Judges have erred in law and misdirected their mind that the compounded adjustment rate of 4% per annum for fifteen (15) years from the date of Section 47 Notice is adequate to compensate the long inordinate delay that have deprived the Appellants from utilizing their rightful compensation money at the earliest possible time.

[18] No mention however, is made of para. 1 of the leave question that "s. 60 of the Sarawak Land Code (Cap. 81) should be read in modification to be in line with art. 13 of the Federal Constitution, in cases of inordinate and unexplained delay of the State in conducting enquiry pursuant to s. 51 of the Sarawak Land Code, after evaluating the evidence in totality".

[19] The main thrust of the appellants' argument is that not only were they deprived of the subject lands due to the acquisition by the State, but inadequate compensation was awarded as a result of, in the words of counsel,

A "the draconian effect of the pre-Malaysia Day law which the Court of Appeal did not interpret in conformity with art. 13(2) of the Federal Constitution". It was strenuously argued that the inordinate and unexplained delay in holding the inquiry had violated the appellants' fundamental rights under art. 13 of the Federal Constitution, which provides:

B **Rights to property**

13 (1) No person shall be deprived of property save in accordance with law.

(2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

C

[20] Given the nature of the complaint, it is surprising that the appellants took no action to apply for judicial review to have the s. 47 notice quashed. The s. 47 notice therefore remains valid and the date thereof would still form the basis for assessing the market value of the subject lands in accordance with s. 60(1)(a) of the Land Code. Such failure to have the s. 47 notice quashed soonest after the s. 48 declaration was made was considered in *Ngu Toh Tung & Ors v. Superintendent Of Lands & Surveys, Kuching Division, Kuching & Anor* [2006] 1 CLJ 30 where the Court of Appeal through Gopal Sri Ram JCA (as he then was) said:

D

E The appellants' repeated complaint before us is the long delay between the s. 47 notice and the s. 48 declaration was made. Since this is their case, they ought therefore to have moved the court in 1996 to have the s. 47 notice quashed so soon after the s. 48 declaration was made.

[21] Comparison was made with s. 8(4) of the West Malaysian Land Acquisition Act 1960 ("the Land Acquisition Act") which provides for a safeguard against inordinate delay but which s. 60(1) of the Land Code does not provide for. Section 8(4) of the Land Acquisition Act is couched in the following language:

F

(4) A declaration under subsection (1) shall lapse and cease to be of any effect on the expiry of two years after the date of its publication in the Gazette in so far as it relates to any land or part of any land in respect of which the land Administrator has not made an award under subsection 14(1) within the said period of two years, and, accordingly, all proceedings already taken or being taken in consequence of such declaration in respect of such land or such part of the land shall terminate and be of no effect.

G

H

[22] The effect of sub-s. (4) above is to invalidate an acquisition where there is inordinate delay by the Land Administrator. In support, learned counsel cited *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee* [1983] 1 LNS 14; [1982] MLRA 624 where it was held by the Federal Court that a delay of seven years after the declaration of acquisition rendered the inquiry and subsequent proceedings null and void.

I

[23] Learned counsel questioned why the safeguard under s. 8(4) of the Land Acquisition Act is not made available to Sarawakians even though 59 years has passed since Malaysia Day in 1963. He said he is ashamed to say that the State Legislature has made no effort in passing similar amendment to s. 60(1)(a) of the Land Code to rectify the "injustice" to the citizens of Sarawak. He therefore urged this court to keep in mind art. 13(2) of the Federal Constitution when interpreting s. 60(1)(a) of the Land Code.

[24] It was submitted that this is an exceptional case for this court to resort to the extraordinary approach in interpreting s. 60(1)(a) of the Land Code so as to align it with art. 13(2) of the Federal Constitution. This according to counsel is necessary not only to promote administrative efficiency but to provide Sarawakians with similar constitutional safeguard as their counterparts in West Malaysia.

[25] So as not to be sidetracked by side issues which may not require determination in dealing with the leave question, it needs to be reiterated that the controversy in the present case is over the conflict between *Jais Chee* and *Surianto*, which revolve round the interpretation to be given to s. 60(1)(a) of the Land Code which provides as follows:

> (1) In determining the amount of compensation to be awarded for land resumed under this Part, the Court shall take into consideration the following matters **and no others**:
>
> (a) **The market value at the date of the publication of the notification under section 47** or, if no such notification has been published, the market value at the date of the posting of the declaration made under section 48; (emphasis added)

[26] The provision is clear and unambiguous, that compensation is to be assessed by considering the market value at the date of the notification under s. 47 of the Land Code or, if there is no such notification, the market value at the date of the declaration under s. 48. In the present case, there is no dispute that there was a notification issued under s. 47 of the Land Code.

[27] There is sufficient adjective law on the subject of statutory interpretation. Suffice it if I refer to *Mohd Noor Othman & Ors v. Hj Mohd Ismail Hj Ibrahim & Ors & Another Case* [1988] 2 CLJ 597; [1988] 1 CLJ (Rep) 224; [1988] 3 MLJ 82 where the Supreme Court comprising Abdul Hamid Acting LP, Lee Hun Hoe CJ (Borneo), Hashim Yeop A Sani SCJ, Mohamad Yusoff and Gunn Chit Tuan JJ emphasised on the need to abide by the trite principle that in interpreting words of a statute, there is no room for the court to go beyond the express language of the statute where the words are clear. It must be given a literal interpretation. The purposive approach will only be applied if the words are capable of more than one interpretation, or if they are in conflict with other provisions of the same or other relevant statutes, or if giving a literal interpretation will lead to an absurdity.

[28] Sections 47 and 48 of the Land Code are reproduced below for context:

> Section 47(1)
>
> 47(1) Whenever the Minister decides that land in any locality is likely to be needed for any of the purposes specified in Section 46, the Superintendent shall cause a public notice of the substance of such decision to be given at convenient places in such locality, and thereupon any officer or other person either generally or specially authorized by the Minister in this behalf and his servants and workmen may enter upon such land and may survey, bore, take levels, set out and mark boundaries, and do all other acts necessary to ascertain whether the land is suitable for such purpose.
>
> Section 48(1) and (2)
>
> 48(1) Whenever it appears to the Minister that any particular land is needed for any of the purposes specified in section 46, the Minister shall make a declaration to that effect.
>
> (2) The declaration shall be posted in the office of the Superintendent and the District Officer and shall state the situation of the land, the particular purpose for which it is needed, its approximate area and all other particulars necessary for identifying it and also the place where a plan of the land, if any has been made, may be inspected. Such declaration shall be conclusive evidence that the land is needed for the purpose specified therein.

[29] In deciding not to give effect to the mandatory requirement of s. 60(1)(a) of the Land Code, *ie*, that compensation is to be assessed by considering the market value at the date of the s. 47 notice, the Court of Appeal in *Jais Chee* gave the following reasons through the judgment of David Wong Dak Wah JCA (as he then was):

> [25] We are fully aware of the wordings in s. 60 of the Sarawak Land Code dictate that the 1996 valuation is to be used as the Compensation to be paid. As we mentioned above, all statutes be in (*sic*) federal or state must be read having regard to the Federal Constitution and in this case, art. 13.
>
> [26] In *B Surinder Singh v. The Government of the Federation of Malaya* [1962] 1 LNS 14; [1962] MLJ 169, this is what Lord Denning when delivering the advice of the Board said:
>
> > In a conflict of this kind between the existing law and the Constitution, the Constitution must prevail. The Court must apply the existing law with such modifications as may be necessary to bring it into accord with the Constitution.

[27] This court in *Kerajaan Negeri Selangor & Ors v. Sagong Tasi & Ors* [2005] 4 CLJ 169, was faced with a state legislation which gave the state government a discretion whether or not to give compensation for acquisition of landed property which would contravene art. 13 of the Federal Constitution. This is how Gopal Sri Ram JCA (as he then was) resolved the inconsistency:

> The way in which s.12 is to be brought into conformity with the Constitution is to make it yield to art. 13(2) which reads:
>
> 13(2) No law shall provide for compulsory acquisition or use of property without adequate compensation, that is achieved by not reading the words "the State Authority may grant compensation therefor" as conferring a discretion on the State Authority whether to grant compensation or not. For otherwise it would render subsection 12 of the 1954 Act violative of art. 13(2) and void because it will be a law that provides for the compulsory acquisition of property without adequate compensation. A statute which confers a discretion on an acquiring authority whether to pay compensation or not enables that authority not to pay compensation. It is therefore a law that does not provide for the payment of adequate compensation and that is why s. 12 will be unconstitutional. Such a consequence is to be avoided, if possible, because a Court in its constitutional role always tries to uphold a statute rather than strike it down as violating the Constitution. As Jeeva Reddy J said in *State of Bihar and Others v. Bihar Distillery Ltd* AIR [1997] SC 1511:
>
> The approach of the Court, while examining the challenge to the constitutionality of an enactment, is to start with the presumption of constitutionality. The Court should try to sustain its validity to the extent possible. It should strike down the enactment only when it is not possible to sustain it.
>
> How then do you modify s. 12 to render it harmonious with art.13(2)? I think you do that by reading the relevant phrase in s. 12 as "the State Authority shall grant adequate compensation therefore." By interpreting the word "may" for "shall" and by introducing "adequate" before compensation, the modification is complete. I am aware that ordinarily we, Judges, are not permitted by our own jurisprudence, to do this. But here you have direction by the supreme law of Federation that such modifications as the present must be done. That is why we can resort to this extraordinary method of interpretation.

[28] Applying the above principles set out above, we are of the considered view that s. 60(1)(a) of the Sarawak Land Code read with art. 13 of the Federal Constitution demands that the s. 51 inquiry for compensation to be paid be conducted within a reasonable time frame so that an 'adequate compensation' can be ascertained. In the case at hand, the s. 51 inquiry was not conducted until some nine years later. In order not to infringe art. 13 of the Federal Constitution, we are constrained to find that the 'adequate compensation' to be the amount valued as at 12 August 2005.

[30] Of pertinence to note is that the Court of Appeal did not rule, correctly in my view, that s. 60(1)(a) of the Land Code is unconstitutional. It merely decided that s. 60(1)(a) must be read with art. 13(2) of the Federal Constitution to ensure that the amount of compensation to be paid to the landowner must be "adequate", *ie*, fair and reasonable. Therefore, the question of the constitutionality of s. 60(1)(a) does not arise at all.

[31] Obviously, the provision is not inconsistent with art. 13(2) of the Federal Constitution for it to be declared void under art. 4(1) as it is not a law that provides for compulsory acquisition without adequate compensation. Delay in making an award cannot be equated with unconstitutionality. In any event, as I shall explain later in this judgment, s. 60(1)(a) of the Land Code is not a law that is subject to modification under art. 162(6) of the Federal Constitution.

[32] In departing from *Jais Chee*, the Court of Appeal panel in *Surianto*, which comprised Idrus Harun JCA (later Attorney General of Malaysia), Tengku Maimun Tuan Mat JCA (now Chief Justice of Malaysia) and Ahmadi Asnawi JCA, unanimously decided that where there is delay in the award of compensation, the market value of the acquired land should be assessed at the date of the s. 47 notification, and not at the date of the s. 48 declaration. This is how the court dealt with the matter:

> [28] The decision in *Jais Chee*, *supra*, in our opinion has the effect of altering the mandatory requirement of s. 60(1)(a) in cases where there is undue delay in making the award of compensation. Needless to say that it is the court's duty as an interpreter of legislation, to construe the provisions in question and arrive at the legal meaning primarily intended by Parliament when the law is plain. The section as it stands is not violative of art. 13 of the Federal Constitution. It is not being challenged on the basis that s. 60(1)(a) is unconstitutional or otherwise repugnant to art. 13 cl. (2) (*Ong Gaik Kee*'s case, *supra*; *Singapore Para Rubber Estate Ltd v. Pentadbir Tanah Daerah, Daerah Rembau, Negeri Sembilan* [2009] 1 CLJ 13; *Keck Seng (Malaysia) Berhad v. Pentadbir Tanah Johor Bahru* (*supra*). Neither is there any challenge by the respondents that the Land Code does not provide for adequate compensation as dictated by art. 13 cl. (2). The law, we apprehend, is that it is only in a situation where the existing law is in conflict with the Constitution that the Court is empowered under art. 62 cl. (6) to modify such law to bring it into accord with the provisions of the Constitution. This is clear in the authorities such as *B Surinder Singh Kanda v. The Government of The Federation of Malaya* [1962] 1 LNS 14; [1962] 28 MLJ 169 and *Kerajaan Negeri Selangor & Ors v. Sagong Tasi & Ors* [2005] 4 CLJ 169.
>
> [29] Accordingly, with respect, while we agree with *Jais Chee*, *supra* that a delay in making the award of compensation might cause the compensation awarded to be inadequate, following the Federal Court's decision in *Ong Gaik Kee*, *supra*, we do not think that it is necessary to go

so far as to invoke cl. (2) of art. 13 for the purpose of determining the fair market value of the subject lands and thus adequate compensation to be awarded to the respondents. We are of the opinion that the respondents can still be adequately compensated within the existing legal framework provided for in Part IV of the Land Code, not by altering the valuation date which is mandatorily required to be used under s. 60(1)(a), but instead by determining the market value of the subject lands in accordance with the said section and from this base market value, with admissible evidence adduced that injustice and inadequacy of compensation proven, a favourable and upward adjustment is made to increase the compensation in view of the 12 years lapse between the date of the publication of notice under s. 47 and the date of the inquiry under s. 51. In this manner the award will be truly reflective of adequate compensation and at the same time in compliance with ss. 60(1)(a) and 66 of the Land Code.

[30] By altering the date of the s. 47 notice to a later date would in effect tantamount to the learned judge amending it which she is clearly bereft of any power to do so and as such, in law should not be countenanced. Accordingly, we are driven to the inevitable finding that the learned judge had misdirected herself in this fundamental respect when Her Ladyship adopted the date of 17 May 2007 as the valuation date for the purpose of determining the adequate compensation to be awarded. In our judgment and to adopt the words of Justice Linton Albert in *Lim Guik Hion & Toh Lee Hua v. Superintendent of Lands & Surveys Kuching Division* [2010] 1 LNS 751, "the court has no discretion, under whatever guise, and estoppel included to flout the express provisions of a statute and hence full force of s. 60(1)(a) must be brought to bear.

[33] The court then went on to cite with approval the unreported High Court case of *Tan Kheng Pang v. Superintendent Of Lands & Surveys*, Land Reference No. 15-3-2007-III consolidated with *Tan Kheng Pang v. Superintendent Of Lands & Surveys*, Land Reference No. 15-4-2007-I. In that case, there was a lapse of 32 years between the date of the s. 47 notice and the date of resumption of the acquired land under s. 48. The High Court held that the relevant date to determine the market value was the date of the s. 47 notice, and to make up for the loss of 32 years, accepted the adjustment made by the respondent's valuer when she generously compounded 8% per annum to the value of the land.

[34] In urging this court to resolve once and for all the conflict between *Jais Chee* and *Surianto*, learned counsel for the appellants pointed to the conflicting decisions of the court in the following cases, the first two applying the strict interpretation of statute whilst the last two interpreting statute in modification with art. 13 of the Federal Constitution:

(i) *Superintendent Of Lands & Surveys Fifth Division Limbang v. Lim Teck Hoo & Anor* [1979] 1 LNS 103; [1979] 1 MLJ 58; [1979] 1 MLRA 9 FC;

A (ii) *Superintendent Of Lands & Surveys Samarahan Division v. Surianto Abdul Hamid & Anor* [2016] 3 CLJ 591; and

(iii) *Pemungut Hasil Tanah, Daerah Barat Daya, Penang v. Kam Gin Paik & Ors* [1986] 1 CLJ 283; [1986] CLJ (Rep) 33 PC;

B (iv) *Jais Chee* (*supra*).

[35] We were urged upon to follow the principle laid down in the last two cases which favour an interpretation that allows for a modification of s. 60(1)(a) so as to bring it in line with art. 13(2) of the Federal Constitution. The decision of this court in *Superintendent Of Land And Survey Department*
C *Kuching Divisional Office & Anor v. Ratnawati Hasbi Mohamad Suleiman* [2020] 2 CLJ 425; [2020] 1 MLRA 385 ("*Ratnawati*") was referred to by both parties but I agree with learned counsel for the appellants that the case has no direct bearing on the question of law raised in the present case as it was not a case that arose from a land reference in the High Court.

D **[36]** It was a writ action seeking for a declaration that the first appellant's failure to comply with the mandatory procedural requirements of ss. 49, 52, 52, 53 and 54 of the Land Code in the resumption process without any notice given to the respondent and without her knowledge was wrongful. Therefore, whatever the court said on s. 60(1)(a) of the Land Code is *obiter* at best.

E **[37]** Having considered the conflicting decisions of the Court of Appeal in *Jais Chee* and *Surianto* carefully, I am inclined to agree with *Surianto*, which incidentally is consistent with the following cases:

(i) *Superintendent Of Lands And Surveys, Kuching Division v. Robert Lee Chang*
F *Hock* [2016] 1 LNS 1130; [2017] 1 MLJ 511 CA which followed Surianto;

(ii) *Buan Joong Sdn Bhd v. Superintendent Of Lands & Surveys (Kuching Division)* [2005] 2 CLJ 910 CA;

G (iii) *Superintendent Of Lands & Surveys Fifth Division, Limbang v. Lim Teck Hoo & Anor* [1979] 1 LNS 103; [1980] 1 MLJ 58 FC.

[38] In *Robert Lee Chang Hoc*k, it was held by the Court of Appeal, per Tengku Maimun Tuan Mat JCA (now CJ) delivering the judgment of the court that:

H (1) Whatever stance taken by the appellant in the High Court could not defeat the statutory requirement as expressly stipulated in s. 60(1)(a) of the Code. It was not for the appellant to waive legislative requirement. The learned High Court Judge erred in using the date of inquiry as the valuation date to determine the compensation to be paid to the respondent as the valuation date to determine the compensation to be
I paid to the respondent as based on the plain reading of ss. 60(1)(a) and 66 of the Code, the valuation date should be s.47 notification. Thus, the

additional sums awarded by the learned High Court judge on the basis of the date of inquiry was without legal justification and could not be sustained (see paras 26-27 & 30).

(2) It was the date of s.47 notification and no others that ought to be considered in determining the compensation to be awarded to the respondent. That being the case, it could not be said that the end result would not be drastically affected given that there was a gap of 12 years between s. 47 notification and s. 48 declaration (see para 31).

(emphasis added)

[39] In *Buan Joong Sdn Bhd* the Court of Appeal endorsed the following reasoning by the High Court:

However, Mr. Kho Lit Kiat, learned counsel for the appellant, argued that 1992, the year of the publication of the s. 48 notification should be taken because the s. 47 notification adverted to the likelihood of acquisition for purposes which are not the same as that mentioned in s. 48 notification and that only part of the land was stated to be affected. He did not cite any authority in support of his argument. I do not think he can find any, because, the plain words of s. 60(1) do not permit such an interpretation. The relevant part of s. 60(1) says that "the Court shall take into consideration (a) the market value at the date of the publication of the notification under s. 47 or, if no such notification has been published, the market value at the date of the posting of the declaration made under s. 48." In this case there was s. 47 notification, clearly it cannot argue otherwise that the year 1990, the date of the s. 47 notification, should be taken in s. 60(1).

[40] *Lim Teck Hoo* is a decision of the then Federal Court which was not referred to by the learned High Court judge in his judgment. Nor was it referred to by the Court of Appeal in *Jais Chee*, and *Surianto* merely made a fleeting reference to the case. A more detailed discussion on the case was undertaken by the majority in *Ratnawati* but as I said the decision has no direct bearing on the issue before us in the present appeal. Therefore, I do not wish to say anything further on the case.

[41] In my view, *Lim Teck Hoo* being a decision of the apex court on s. 60(1)(a) of the Land Code is the authority to resolve the conflict between *Jais Chee* and *Surianto*. The facts of the case as set out in the headnote are as follows. A notification under s. 47 of the Land Code stating that the lands were likely to be required for public purposes was published on 13 March 1971. Subsequently, four different declarations were made under s. 48 stating that the lands were needed for public purposes and the declarations were published in the Gazette on 8 August 1974, 10 October 1974, 7 August 1975 and 11 November 1976.

[42] The learned trial judge held that the proper date for determining the market value was not the date on which notification under s. 47 was published, but the various dates on which the declarations under s. 48 were

gazetted. In his judgment, the learned judge said that as soon as a declaration under s. 48 was issued, the notification under s. 47 became fully exhausted. Accordingly, he made awards based on the market value of the lands at the dates of the declarations under s. 48. However, he also made an alternative assessment of the market value as at the date of the publication of the notification under s. 47.

[43] The appellant appealed on the ground that the learned judge was wrong to say that the material date for the determination of compensation should be based on s. 48. On the other hand, the respondent submitted that the learned judge was right to make the awards under s. 48 but contended that the awards were inadequate.

[44] In allowing the appellant's appeal, it was held that the learned trial judge should, in accordance with s. 60 of the Land Code, have awarded the owner the assessment in accordance with the date of notification under s. 47 and not in accordance with the declarations under s. 48. In the course of his judgment Lee Hun Hoe CJ (Borneo) made the following pertinent observations:

> I take the view that under the Sarawak legislation it is possible for more declarations than one under section 48 to be made in respect of land comprised in a notification under section 47. I am aware where compensation has to be determined with reference to the material date under section 47 any delay in making a declaration under section 48 is bound to cause the person whose land is to be acquired to suffer pecuniary loss if land prices have arisen between the period of notification under section 47 and declaration under section 48. The delay would be longer if successive declarations under section 48 could be made in respect of land comprised in the notification under section 47. It could also work in the reverse if the land prices tumble. I hope the government would try to minimize the delay in making the declaration or declarations. One way of preventing long delay would be to fix a time whereby notifications under section 47 would automatically lapse. Another way is to withdraw resumption under section 79 as soon as the land is no more required for public purpose. In my view as long as the publication of the notifications under section 47 exists there is nothing to prevent the making of more declarations than one under section 48 involving the acquisition of a large area as in this case.

[45] I see no reason why this court should depart from *Lim Teck Hoo*. The case is directly on point as it deals with the same provision of law that this court is dealing with in the present appeal, *ie*, s. 60(1)(a) of the Land Code. I am mindful that the court there was not dealing with any constitutional issue but I do agree with *Surianto* that it is unnecessary to go so far as to invoke art. 13(2) of the Federal Constitution to determine adequacy of compensation in a land reference, following *Ong Gaik Kee* (*supra*), a Federal Court decision.

[46] As suggested by Lee Hun Hoe CJ (Borneo) in *Lim Teck Hoo*, one way of preventing long delay would be to fix a timeline whereby notifications under s. 47 of the Land Code would automatically lapse. That of course must be left to the wisdom of the State Legislature as was done by Federal Legislature in respect of the Land Acquisition Act.

[47] Thus, while the learned High Court judge was at liberty to follow either *Jais Chee* or *Surianto* (he chose to follow *Jais Chee*), he was bound by the doctrine of *stare decisis* to abide by *Lim Teck Hoo*, and so was the Court of Appeal in *Jais Chee*. There is a possibility that *Lim Teck Hoo* was not brought to the attention of the learned High Court judge. He would in all probability have decided differently if it was.

[48] *Jais Chee* it will be noted was decided on the footing that s. 60(1)(a) of the Land Code can be modified under art. 162(6) of the Federal Constitution, relying heavily on the judgment of the Court of Appeal delivered by Gopal Sri Ram JCA (as he then was) in *Kerajaan Negeri Selangor & Ors v. Sagong Tasi & Ors* [2005] 4 CLJ 169. In *Ratnawati*, David Wong Dak Wah (by then CJSS) who wrote the judgment in *Jais Chee* again relied on *Sagong Tasi* in his dissenting judgment.

[49] Article 162(6) of the Federal Constitution reads as follows:

> (6) Any court or tribunal applying the provision of any existing law which has not been modified on or after Merdeka Day under this Article or otherwise may apply it with such modifications as may be necessary to bring it into accord with the provisions of this Constitution.

[50] Undoubtedly the appellants' contention that the court should modify s. 60(1)(a) of the Land Code to bring it into accord with art. 13(2) of the Federal Constitution is inspired by *Jais Chee* and to a certain extent *Ong Gaik Kee*. The question is whether modification of the Land Code under the article is at all permissible. *Ong Gaik Kee* is a case on the Land Acquisition Act where the relevant provisions are wholly at variance with s. 60(1)(a) of the Land Code. There the Federal Court was dealing amongst others with para. 1(1) of the First Schedule to the Land Acquisition Act which provides:

> **Market value**
>
> 1(1) For the purposes of this Act the term "market value" where applied to any scheduled land mean the market value of such land:
>
> (a) at the date of publication in the Gazette of the notification under section 4, provided that such notification shall within twelve months from the date thereof be followed by a declaration under section 8 in respect of all or some part of the land in the locality specified; or
>
> (b) in other cases, at the date of the publication in the Gazette of the declaration made under section 8.

[51] The case is therefore of no assistance to the appellants. The operative words in art. 162(6) of the Federal Constitution are "existing law", which art. 160 defines as "any law in operation in the Federation or any part thereof immediately before Merdeka Day" and the words "Merdeka Day" is defined by the same article as "the thirty-first day of August, nineteen hundred and fifty-seven" (31 August 1957). The word "Federation" on the other hand means the Federation established in accordance with the Federation of Malaya Agreement 1957 (see s. 66 of the Interpretation Acts 1948).

[52] What this means is that the court's power of modification under art. 162(6) of the Federal Constitution is only exercisable in respect of laws that were in operation in the Federation or any part thereof immediately before 31 August 1957 and not after. Section 60(1)(a) of the Land Code is not such law. It is a law that came into operation on 1 January 1958 (after Merdeka Day) and when Sarawak was not even part of the Federation. It is therefore not an "existing law" within the meaning of art. 162(6) of the Federal Constitution. This provides a complete answer to the appellants' argument that s. 60(1)(a) of the Land Code should be modified to be in line with art. 13(2) of the Federal Constitution. The leave question had wrongly described s. 60 of the Land Code as a pre-Merdeka law when it is not.

[53] I mentioned that the Land Code came into force on 1 January 1958, which is four months after Merdeka Day on 31 August 1957. On Malaysia Day, the Land Code, being a law that the State Legislature had the legislative competency to pass, continues to have effect as explained by Suffian LP in *Re Datuk James Wong Kim Min; Minister of Home Affairs Malaysia & Ors v. Datuk James Wong Kim Min* [1976] 1 LNS 129; [1976] 2 MLJ 2457:

> But the advent of Malaysia Day did not however automatically repeal Sarawak laws; on the contrary, they were expressly saved by s. 73 of the Malaysia Act, which by sub-section (5) provided that the Sarawak laws were "present laws" and by sub-section (1) that "they shall, on or after Malaysia Day, have effect according to their tenor, and be construed as if this Act has not been passed.

[54] Learned counsel for the respondent ventured to argue that only the Governor (now known as Yang di-Pertua Negeri) has the power to modify any existing State law. The basis for the argument is arts. 46(3)(a) and 46(4)(a) of the Constitution of the State of Sarawak ("the State Constitution") which we reproduce below for ease of reference:

> Article 46(3)(a)
>
> (3)(a) The Governor of the Colony of Sarawak may by order made at any time before Malaysia Day make such modifications in any existing law as appear to him to be necessary or expedient in consequence

Article 46(4)(a)

(4)(a) The Governor may by order at any time during the period of two years after the commencement of this Constitution make such modifications in any existing law, to the extent that it is by virtue of the provisions of the Federal Constitution treated as a State law, as appear to him to be necessary or expedient in consequence of the promulgation of this Constitution or the passing of the Malaysia Act.

[55] As for the meaning of "existing law", art. 44 of the State Constitution defines it to mean any law having effect as part of the law of the colony of Sarawak or any part thereof immediately before the commencement of the State Constitution. The State Constitution which is Annexure C to the Malaysia Agreement came into force on Malaysia Day, 16 September 1963. So the cut-off date is 16 September 1963.

[56] With all due respect to learned counsel for the respondent, I am unable to accede to the argument. From a plain reading of art. 46(3)(a) of the State Constitution, a modification order under the article could only have been made by the Governor before Malaysia Day and likewise a modification order under art. 46(4)(a) could only have been made by him within two years after the commencement of the State Constitution. Both periods have long gone by.

[57] In the alternative, it was submitted that laws of Sarawak such as the Land Code may be modified by the Yang di-Pertuan Agong at the request of the Yang di-Pertua Negeri of Sarawak under s. 74(4) of the Malaysia Act 1963 ("MA63"). The provision reads:

(4) In any present law of a Borneo State or of Singapore which is to be treated as State law the Yang di-Pertuan Agong may by order make (in addition to any modifications made under subsection (1)), such modifications as may be requested by the Governor and appear to him to be necessary or expedient in consequence of the passing of this Act.

[58] The contention was that the power of modification of "present law" such as the Land Code is not vested in the courts by art. 162(6) of the Federal Constitution but in the Yang di-Pertuan Agong by s. 74(4) of the Malaysia Act, exercisable by His Majesty at the request of the Governor (the Yang di-Pertua Negeri).

[59] There is merit in the argument. Given the clear language of s. 74(4) of MA63, I agree with Dato Sri JC Fong for the respondent that the modifications can only be made by the Yang di-Pertuan Agong at the request of the Yang di-Pertua Negeri of Sarawak or the Yang di-Pertua Negeri of Sabah as the case may be. Such power of modification of State laws like the Land Code is not conferred on the courts as it is not a law that comes within the purview of art. 162(6) of the Federal Constitution.

[60] With due respect, *Jais Chee*'s reliance on *Sagong Tasi* in interpreting s. 60(1)(a) of the Land Code is misconceived as in that case the Court of Appeal was dealing with s. 12 of the Aborigines Peoples Act 1954 which, unlike s. 60(1)(a) of the Land Code, is a pre-Merdeka law and therefore modifiable under art. 162(6) of the Federal Constitution.

[61] For the reasons given, my answer to the leave question is in the negative as s. 60(1)(a) of the Land Code is not a pre-Merdeka law and therefore not an "existing law" that may be modified under art. 162(6) of the Federal Constitution. That power of modification lies with the Yang di-Pertuan Agong at the request of the Yang di-Pertua Negeri of Sarawak or Sabah as provided by s. 74(4) of the Malaysia Act and not with the courts.

[62] In any event, I find no merit in the appeal as the appellants have been adequately, fairly and reasonably compensated by having the compensation sum adjusted upward due to the delay in making the award. No injustice has been occasioned by the decision of the Court of Appeal.

[63] My learned sisters have read this judgment in draft and have agreed with it except that Justice Mary Lim Thiam Suan has a different view on the proper way to interpret statutes (para. 1 of her supporting judgment). Accordingly, the appeal is dismissed. Parties to bear own costs.

Mary Lim JCA:

[64] I have read the draft judgment of my learned brother and while I agree with the conclusion reached for the reasons given (save for the view on statutory interpretation), that is, that the appeal must stand dismissed, these are my further reasons.

Factual Background

[65] The appellants' lands were resumed by the respondent through a notice issued under s. 47 of the Land Code of Sarawak (Cap. 81) and dated 16 July 1997. The effect of such a notice is to put all, especially the landowners, that the Minister had decided that the appellants' lands were "likely to be needed for any of the purposes specified in s. 46". Such a notice authorised the lawful entry onto the appellants' lands for the purpose of survey, boring, taking of levels, setting out and marking boundaries as well as doing "all other acts necessary to ascertain whether the land is suitable for such purpose". That, as was mentioned, was in 1997.

[66] It was not until some 12 years later on 2 July 2009 that the Minister proceeded to declare under s. 48 of the Land Code that the appellants' lands were indeed "needed for any of the purposes specified in s. 46". The purpose identified was "for the purpose of Sungai Sarawak Flood Mitigation Channel". The purpose and legality of this declaration and hence, the resumption was not challenged by the appellants and is thus not in issue. What was instead challenged by the appellants was the adequacy of compensation awarded by the superintendent.

[67] Returning to the facts, the superintendent conducted an inquiry under s. 51. This ultimately led to an award of compensation on 21 November 2011.

[68] The appellants accepted the award under protest. They then applied under s. 56 to have their objection referred to the High Court for determination. The superintendent did so accordingly.

[69] In the statement prepared by the superintendent under s. 57, it is quite evident that the appellants' basis of objection was filed under s. 71(2), that it was in respect of the sufficiency of the amount awarded as compensation.

At The High Court

[70] Before the High Court, the appellants contended that the compensation was inadequate. According to the learned judge, the only issue to be determined was whether the compensation to be awarded should be based on the value of the appellants' lands at the date under s. 47 or 48 notice. Upon answering that question would then arise the matter of quantum of compensation to be awarded – see para. [8] of the grounds of decision of the High Court.

[71] In answering the question, the learned judge preferred to follow the decision of the Court of Appeal in *Jais Chee & Ors v. Superintendent of Lands & Surveys Kuching Division* [2014] 3 CLJ 467 instead of a later decision of the same Court in *Superintendent of Lands & Surveys Samarahan Division v. Surianto Abdul Hamid & Anor* [2016] 3 CLJ 591.

At The Court Of Appeal

[72] The Court of Appeal allowed the appeal and restored the award of compensation made by the superintendent. According to the Court of Appeal, the superintendent was obliged to award compensation based on the values assessed by reference to the date of the s. 47 notice, and not by reference to the date of the section 48 notice.

Determination

[73] The appellants' challenge in court at all material times was always over the sufficiency of compensation. It was never a question of the legality of the resumption exercise. This is why land reference proceedings are initiated – see s. 56 of the Land Code; dissatisfaction:

(i) on the measurement of the land resumed;

(ii) the amount of compensation; and

(iii) the persons to whom it is payable or the apportionment of the compensation among the persons interested.

[74] Had the challenge been about the validity of the resumption, then such challenge must be a frontal or direct challenge in entirely different proceedings, whether through judicial review applications as was the case of *Pemungut Hasil Tanah, Kuantan v. Oriental Rubber & Palmoil Sdn Bhd* [1985] 1 LNS 127; [1986] 1 MLJ 39 and *Pemungut Hasil Tanah Daerah Barat Daya, Penang v. Kam Gin Paik & Ors* [1986] CLJ (Rep) 33; [1986] 1 MLJ 362 or for declaratory orders as in *Superintendent Of Land And Survey Department Kuching Divisional Office & Anor v. Ratnawati Hasbi Mohamad Suleiman* [2020] 2 CLJ 425; [2020] 1 MLRA 385.

[75] Collateral attacks have always been frowned upon by the court; and the present circumstances are no different. This was reminded by this court in *Ann Joo Steel Bhd v. Pengarah Tanah Dan Galian Negeri Pulau Pinang & Anor And Another Appeal* [2019] 9 CLJ 153. Although discussed in the context of a court order, that until and unless such order is set aside in direct proceedings, the order stands valid and enforceable and cannot be the subject of some collateral attack; it is equally true in the case of compulsory resumption of land. That until and unless a notice of resumption has been set aside on any reason including a delay in holding an inquiry to determine the amount of compensation, the notice of resumption stands valid.

[76] I make this observation as the arguments before us really seeks to challenge the resumption by reason of delay but for reasons best known by the appellants themselves, the proper and appropriate steps were not taken at the material time. In my view, the submissions urging this court to deploy the power of modification under art. 162(6) of the Federal Constitution are not feasible not only for the reasons ably discussed by my learned brother but is also questionable.

[77] Therefore, the issue of compensation, and that is the single issue before us, must be addressed within the confines of the Land Code. Since the complaint of the appellants is about the adequacy of compensation, it would make sense that the appellants argued for a valuation of the subject lands at the date of the s. 48 notice while the respondent pressed for a valuation by reference to the s. 47 date. Logically, the appellants' must have been unsuccessful at the inquiry.

[78] However, this was not what transpired. And, this is where I must remind all counsel of their primary duty as officers of the court to ensure that full facts are duly and properly disclosed. A scrutiny of the records of appeal reveal some basic but material and relevant facts which ought to have been brought to our attention, but were not. These facts throw a completely different light on the appellants' case, quite different from that portrayed.

[79] Going back to the salient facts as to the appellants and the lands resumed.

[80] The appellants were, until the resumption, the registered proprietors of two parcels of land described as Lot 4000 Block 17 Salak Land District ("Lot 4000") and Lot 5052 Block 17 Salak Land District being part of Lot 4004 Block 17 Salak Land District ("Lot 4004") (collectively "the subject lands"). The subject lands comprised a 60-year leasehold interests from 27 July 1962 and expiring on 31 December 2022. At the time of purchase, the appellants had less than half of the remaining years of the relevant lease. On record, unless renewed, the leases have since expired.

[81] The appellants had purchased the subject lands on 23 December 1996 at a consideration of RM210,000, equivalent to RM102,754,81 per hectare. This is stated at para. 18.0 of the appellants' own valuation report. This works out to RM10.30 per square metre (p.s.m.) as explained by the government valuer in her witness statement and, as cited by the Court of Appeal at para. [39] of its grounds of judgment. See also p. 16 of the appellants' valuation report.

[82] Before the superintendent who was conducting the inquiry, both the appellants' valuers and the government valuer offered their respective opinion on the market value as at both dates, be it under the s. 47 or 48 notice. This indicates that everyone involved was fully aware of the delay and were already offering their views on the appropriate value(s) so that the superintendent could determine the amount of compensation.

[83] After offering the best comparative value of RM17.50 p.s.m. and recognising the matter of delay, the government valuer recommended at paras. 5.7 and 6.2 of the report, a compounded rate of interest at 4% per annum for 15 years till the date of resumption on 9 January 2012 calculated by reference to the date of the notice under s. 47. The market value of the subject lands was then opined to be RM31.50 p.s.m, increased from RM17.50 p.s.m. As for the market value calculated by reference to the s. 48 notice, the government valuer opined that the appropriate market value was also within the range of RM30 p.s.m. to RM32 p.s.m. – see paras. 7.5 and 7.7 of the report.

[84] On the other hand, the appellants' valuation report offered the value of RM10.30 p.s.m. for a valuation under the s. 47 notice without the element of interest; and values of RM41 p.s.m. and RM42 p.s.m. for a valuation under the s. 48 notice. These latter values were based on a transaction in 2007, a sale closest to the s. 48 notice and said to be the most appropriate comparative valuation.

[85] The superintendent awarded compensation for the subject lands based on the value of RM32 p.s.m. More than that, the superintendent stated that this was a valuation under s. 48 – see para. 6.1 of the statutory statement filed by the superintendent under s. 57 of the Land Code. This was despite knowing that s. 60(1)(a) required the material date to be as at the date of the publication of the s. 47 notice since there was such a notice to begin with.

[86] At the High Court, the learned judge disagreed with the award of the superintendent. His Lordship rejected the opinion and exercise of upward adjustment by the government valuer taking the view that "even with any upward adjustment, the amount of compensation would still be far less than the value of the land as at s. 48 notice". With this, the learned judge proceeded to accept the valuation offered by the appellants. The award was increased to RM333,512.30 and the respondent was ordered to pay the difference between this sum and the sum already paid pursuant to the s. 51 inquiry.

[87] At para. [4] of the grounds of decision, the learned judge set our s. 60(1)(a) of the Land Code. I noticed that His Lordship stated as follows:

> In determining the amount of compensation to be awarded for land resumed under this part, the Court **should** take the following matters and no others ... (emphasis added)

[88] It is unclear whether this was a typographical error for s. 60(1)(a) states that the court "shall" and not "should" take into consideration the following matters and no others. Perhaps this may, in part, account for the route or line of reasoning embarked by the learned judge.

[89] Regardless, it was not open to the High Court to take the course of reasoning in view of the terms of the s. 60. Recent decisions have pointed to s. 17A of the Interpretation Acts 1948 and 1967 (Act 188) as suggesting and preferring the purposive approach; reading the object, purpose, and content of the provisions. Legislation is seen as enacted in clear terms conveying its intent and thus, when interpreting or construing their meaning, it should no longer be the three-step formula. See *Bursa Malaysia Securities Bhd v. Mohd Afrizan Husain* [2022] 4 CLJ 657; *AJS v. JMH & Another Appeal* [2022] 1 CLJ 331; *Tan Kah Fatt & Anor v. Tan Ying* [2023] 2 CLJ 169; [2023] 2 MCLR 525; and *Datuk Bandar Kuala Lumpur v. Perbadanan Pengurusan Trellises & Ors And Other Appeals* [2023] 5 CLJ 167. In the context of ss. 47 and 48 read together with s. 60(1)(a) of the Land Code, it is evident that these provisions are enacted to provide for adequate compensation of any land resumed by the State Government. Any delay in carrying out any exercise of determination of the adequacy of compensation does not alter that intent.

[90] I must add that since compensation for the resumption of the subject lands was actually under s. 48, as specified by the superintendent in the statutory statement, there was really no room or cause for the appellants to complain. After all, the appellants were indeed paid compensation based on s. 48. If anyone should complain, it would have been the acquiring authority.

[91] Although the Court of Appeal had allowed the appeal of the respondent and ordered compensation to be paid by reference to the date of the s. 47 notice and supposedly restoring the award of the superintendent, it must be pointed out that in actuality, it was not. The value under the s. 47

notice was RM31.50 p.s.m. whereas the value under the s. 48 notice was a range between RM30 p.s.m. to RM32 p.s.m. The superintendent awarded compensation at the rate of RM32 p.s.m.; clearly a value under s. 48 and not s. 47. And, this is what appears in the statutory statement of the superintendent.

[92] Be that as it may, the market values of the subject lands were effectively similar, whether under the ss. 47 or 48 notice. The appellants who had purchased the subject lands the year before the resumption notice under s. 47 at the price of RM10.30 p.s.m. was ultimately paid RM32 p.s.m. for the resumption. Such compensation cannot be said to be inadequate by the terms of art. 13 of the Federal Constitution; even if the modification exercise can be undertaken in law.

[93] A final word, and this concerns the time taken for the appellants' objections to be referred to the High Court. I noticed that the appellants had filed their objections in 2011 but the reference was only filed seven years later, in 2018 and duly disposed by the High Court in the same year. For the same reasons so well-articulated by Lee Hun Hoe CJ (Borneo) in *Superintendent Of Lands & Surveys Fifth Division, Limbang v. Lim Teck Hoo & Anor* [1979] 1 LNS 103; [1980] 1 MLJ 58 and the implications to rights under art. 13 of the Federal Constitution, I make this additional observation that all objections should be promptly referred to the High Court for determination.

[94] For the reasons added above, this appeal is dismissed.